

complainant and take all the evidence that he produces in support of the prosecution. He is then bound to hear the accused and take such evidence as the accused may produce. Until all this has been done he has no power and no jurisdiction to record an order of acquittal. In the present case the Magistrate acquitted the accused, as he was pleased to call his procedure without taking the evidence produced in support of the prosecution. The order was passed without jurisdiction. It was not an order of acquittal, and we set it aside. So far as we can judge of the case at all from the record, which is very meagre, there would appear to have arisen a dispute which might or might not have resulted in a breach of the peace. Seeing that Magistrates are responsible that public peace is not broken, it would have been well if the Magistrate had considered it necessary to send for the accused, gone thoroughly into the evidence of both sides and ascertained whether, apart from the assault, there was or was not danger of a breach of the peace. The learned Magistrate says that his time would have been wasted if he had heard the whole of the evidence. He will find, as his experience extends, that the greatest safeguard against time being wasted is a proper, diligent and thorough examination of the complainant made by the Magistrate himself in an intelligent manner and not in a perfunctory way. A Magistrate by a disinterested inquiry is often able to satisfy himself that the complaint is imaginary or unnecessary, and by dismissing it as he can, and only can on being so satisfied before he calls upon the accused to appear, prevent much needless harrassment and irritation. The order of the Magistrate is set aside.

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APPELLATE CIVIL.

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February 6.

Before Sir John Edge, Kt., Chief Justice; Mr. Justice Knox and Mr. Justice Blair.

JAGGAR NATH PANDE (OPPOSITE PARTY) *v.* JOKHU TEWARI (APPLICANT).
Civil Procedure Code, section 214—Pre-emption—Effect of an appeal from a decree for pre-emption on the time limited for paying in the pre-emptive price.

A decree was given in favor of the plaintiff in a suit for pre-emption. The plaintiff paid in a portion only of the pre-emptive price within the time limited by

First Appeal No. 35 of 1895, from a decree of Pandit Rai Indar Narain, Sub-ordinate Judge of Mirzapur, dated the 4th February 1895.

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the decree. The defendant appealed, Long after the time prescribed by the original decree for payment had expired, the defendant's appeal was dismissed, but the time for payment was not extended by the Appellate Court's decree. The plaintiff then, after the lapse of a period from the date of the appellate decree in excess of that which had been given him for payment by the decree of the first Court, paid in the balance of the pre-emptive price, which was accepted by the Court. On appeal by the defendant from the Court's order directing the balance of the pre-emptive price to be received, it was *held* that the order of the Court allowing the payment was without jurisdiction, the decree having, on the expiration of the time limited without payment by the plaintiff, become a decree in favor of the defendant.

This was an appeal against an order allowing execution of a decree for pre-emption under the following circumstances:—

The respondent, Jokhu Tewari, obtained a decree for pre-emption on the 26th of March 1892 conditioned on his paying into Court on or before the 1st of June 1892 Rs. 7,450 the pre-emptive price. On the 23rd of April 1892, the defendant vendee, Jaggarr Nath, appealed to the High Court against the decree of the 26th of March. On the 1st of June 1892, the plaintiff decree-holder applied to deposit in Court Rs. 4,150, part of the pre-emptive price; and the money was actually deposited on the 2nd of June. On the 6th of November 1894, the High Court dismissed the defendant's appeal with costs and confirmed the decree of the first Court. On the 12th January 1895, that is to say, on the last day of a period from the date of the decree in appeal equal to that allowed for payment by the decree of the court of first instance, the decree-holder applied to be allowed to deposit the balance of the pre-emptive price. The 13th of January was a Sunday, and on the 14th the money was paid into the Treasury, and the Court granted execution of the decree. The lower court relied on the ruling of the High Court in *Rup Chand v. Shams-ul-Jehan* (1). and held the pre-emptive price must be considered to have been deposited within time.

From this order the defendant vendee appealed to the High Court.

The Hon'ble Mr. Colvin and Pandit Sundar Lal, for the appellant.

Munshi Ram Prasad, for the respondent.

EDGE, C. J., KNOX and BLAIR JJ.—This is an appeal from an order in execution proceedings. The suit was one for pre-emption. The Court of first instance made a decree under section 214 of Act No. XIV of 1882, specifying the 1st of June 1892, as the day on or before which the purchase money should be paid. It further decreed that if the purchase money was not paid on or before the 1st of June 1892, the suit should stand dismissed with costs. It was a decree exactly in the terms of section 214. The purchase money decreed was Rs. 7,450. The decree was made on the 26th of March, 1892. On the 1st of June 1892, the plaintiff paid into Court, that is, into the Treasury, Rs. 4,150. On the 23rd of April 1892, the defendant had appealed to the High Court from the decree of the 26th of March. On the 6th of November 1894 the High Court dismissed the defendant's appeal with costs and confirmed the decree of the first Court. The next thing which happened was that on the 12th of January 1895, the plaintiff applied to the first Court for permission to pay into Court the balance of the decreed pre-emptive money, the balance being Rs. 3,300. On that application the first Court granted permission to make payment of the balance, holding that as the original time allowed when calculated out amounted to sixty-eight days, and as the 12th of January 1895, was the sixty-eighth day from the High Court's decree of the 6th of November 1894, the plaintiff was entitled to pay in the balance of Rs. 3,300 and to execute the decree for pre-emption. The next thing that happened was that the plaintiff did not pay Rs. 3,300 on the 12th of January 1895. He had come to Court so late in the day that the Treasury was closed, and he was unable to make the payment. Having some hazy idea perhaps that the Indian Limitation Act of 1877 applied, the 13th of January being a Sunday, he made the payment into the Treasury on Monday the 14th of January 1895, of the balance of the pre-emptive money. The appeal before us is an appeal from the order allowing the payment and the execution of the decree for pre-emption.

On behalf of the respondent it has been contended that when there is an appeal from a decree for pre-emption, the time within

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which the purchase money had been ordered to be paid is extended, and the Appellate Court's decree in such appeal, although it says nothing about extending the time, has the effect of giving the plaintiff, whether he is appellant or respondent, the corresponding period of time from the date of the appellate Court's decree for the payment of the pre-emptive price to that which he had from the date of the decree of the Court of first instance. In support of that proposition we have been referred to the decisions in *Rup Chand v. Shamsh-ul-jehan* (1), *Noor Ali Chowdhuri v. Koni Meah* (2), and *Daulat and Jagjivan v. Bhukandas Manekchand* (3), and in the course of the argument we were also referred to *Mulu Singh v. Rahim Kuar* (4), *Jairam Singh v. Sri Kishen* (5), *Kodai Singh v. Jaisri Singh* (6) and *Wazir Khan v. Kale Khan* (7).

Section 214 of Act XIV of 1882 is precise. The Court acting under that section, if it acts in compliance with it, specifies and fixes a day certain as the day on or before which the pre-emptive price is to be paid, and decrees that if the pre-emptive price is not paid on or before that day fixed, the suit shall stand dismissed with costs.

Now there is no doubt that a plaintiff who has obtained a decree under section 214 can appeal within the period prescribed by the Indian Limitation Act, 1877, for his appeal, whether or not he has made the payment on or before the day fixed, and on his appeal the Appellate Court, if it sees fit so to do, may extend the time within which the pre-emptive price is to be paid and fix a day itself. But it would be, in our opinion, frustrating the intention of the Legislature in section 214, if we were to hold that a plaintiff merely by appealing from a decree in pre-emption could extend the time to an uncertain and unspecified day. We cannot believe it to have been the intention of the Legislature that a plaintiff in pre-emption could have a power of his own accord to effect the stay of the execution of a decree which, by reason of the pre-emptive price

(1) I. L. R., 11 All., 346.

(4) Weekly Notes, 1888, p. 22.

(2) I. L. R., 13 Calc., 13.

(5) Weekly Notes, 1890, p. 92.

(3) I. L. R., 11 Bom., 172.

(6) I. L. R., 13 All., 370.

(7) I. L. R., 16 All., 126.

not having been paid on or before the day fixed, had become a decree in favor of the defendant. The contention on behalf of the respondent even went so far as to suggest that an appeal by a defendant in pre-emption had of itself the effect of extending the time fixed by the first Court for payment of the pre-emptive price. No doubt the defendant in pre-emption is entitled, within limitation and before the decree in pre-emption has become a decree in his favour dismissing the suit with costs, to appeal. But when his appeal would come on for hearing we fail to see what relief he could be entitled to, if the pre-emptive price had not been paid within the time fixed by the first Court, as in that event the only operative decree subsisting at the time of the hearing of the appeal would be a decree entirely in favor of the appellant.

Now on principle we hold that the full pre-emptive price not having been paid on or before the 1st of June 1892, the decree became operative as a decree dismissing the plaintiff's suit with costs, and the Court of first instance had no jurisdiction to pass an order allowing the plaintiff to pay the balance of the pre-emptive price into Court and to execute a decree which could only be executed against the plaintiff by the defendant. We allow this appeal with costs and set aside the order in execution with costs.

Appeal decreed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkitt.

SHEORATAN KUNWARI (PLAINTIFF) v. RAM PARGASH AND OTHERS

(DEFENDANTS)*

Act No. XX of 1863 (Religious Endowments Act) section 14—Bengal Regulation No. XIX of 1810—Civil Procedure Code, section 539—Trust—Suit to remove trustees of Hindu religious endowments—Jurisdiction—Hindu law—Right of representative of founder of trust to nominate trustee.

The Maharaja of B. in 1863 assigned certain lands situate in Bengal for the maintenance of a temple at Chauria in the Gorakhpur district, and appointed certain trustees of the endowment. Those trustees dealt with the property in a manner inconsistent with the trust by making alienations thereof as if it were their own private property. In 1893, the representative in title of the original settlor sued in the Court of the District Judge of Gorakhpur to have certain alienations made

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February 13.

* First Appeal No. 322 of 1893 from a decree of T. Benson, Esq., District Judge of Gorakhpur, dated the 6th October 1893.